

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**BOBBY R. WILSON, Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVY  
COLLEGE OFFICE, Bremerton, WA,  
Employer**

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**Docket No. 04-2042  
Issued: February 14, 2005**

*Appearances:*  
*Bobby R. Wilson, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On August 12, 2004 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs' hearing representative dated July 27, 2004, affirming a September 8, 2003 decision which found that he failed to establish an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant established that he sustained an injury in the performance of duty.

**FACTUAL HISTORY**

On July 8, 2003 appellant, then a 51-year-old education technician, filed an occupational disease claim alleging that on April 9, 2002 he reinjured his left shoulder, neck and arm as a

result of repetitive data input work. He was assigned to the same task on June 11, 2003 which further aggravated his condition. Appellant first reported the condition on June 12, 2003.

In support of his claim, appellant submitted multiple reports of physician assistants from June 20 to July 3, 2003, noting pain to the left shoulder, upper back and neck.

In a report dated July 16, 2003, a supervisor stated that appellant's assignments included no more than 30 minutes of steady computer use a day. With respect to the recent data input assignment, he noted that appellant took two days to complete the assignment while a coworker took an hour and a half. He also noted that during the year appellant was constantly using the computer to write a book and, following counseling, he was allowed to use the computer to work on computer classes, finishing several. In a narrative dated August 14, 2003, appellant stated that he initially had muscle spasms on April 9, 2002 as a result of a data input project. He was assigned the same project on June 11, 2003 which caused an aggravation of prior severe pain requiring medical treatment. After returning to work his condition was aggravated due to environmental stress. His initial injury occurred on April 13, 1996, prior to his federal employment.

In an October 11, 1995 report, Dr. Thomas Noel Allan, a Board-certified radiologist, noted that cervical x-rays revealed minimal lordosis in the lower cervical region, degenerative disc disease at C5-6, decreased height at C7-T1 and narrowing at C3-4, C4-5 and C5-6. On August 16, 1996 a magnetic resonance imaging (MRI) scan of the cervical spine was read as normal. In a report dated November 11, 1997, Dr. Gary L. Henriksen, Board-certified in preventive medicine, stated that appellant sustained a work-related cervical strain and a herniated disc pulposus on April 14, 1997. He noted that appellant had reached maximum medical improvement on that date. The physician prescribed restrictions against loading activity and vibrations to his neck and shoulder. In a report dated March 29, 2002, Dr. Bruce A. Bonsack, an internist, noted that appellant had experienced neck and shoulder pain during the prior 10 days. Appellant noted that he had been exercising more which increased his pain. The physician noted tenderness around the neck and decreased range of motion with chin to shoulder on flexion and extension. On August 19, 2003 Dr. Charles S. Paxson, an internist, noted muscle spasms in the neck and left shoulder.

In a decision dated September 8, 2003, the Office denied appellant's claim on the grounds that the medial evidence did not support a work-related injury.

On September 17, 2003 appellant requested an oral hearing. A hearing was held on May 19, 2004. By decision dated July 27, 2004, an Office hearing representative affirmed the September 8, 2003 decision denying benefits.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

### ANALYSIS

In the present case, it is not disputed that appellant has a medical condition and identified those employment factors that he believes aggravated his preexisting condition. However, the Board finds that appellant has submitted insufficient medical evidence to establish that his left shoulder, neck and arm conditions were caused or aggravated by factors of his federal employment.

The medical evidence, which addressed appellant’s left shoulder, neck and cervical conditions, failed to provide a discussion of how his federal duties caused or contributed to his medical condition. The report from Dr. Paxson stated that appellant’s muscle spasm condition at the base of his neck on the left side comes and goes for unclear reasons. Although the physician was generally aware of appellant’s keystroke operations and using a mouse, he suggested that spasms in supportive muscles used to accomplish these tasks occur often. He did not refer to either the April 9, 2002 or the June 11, 2003 incidents, nor did he review an incident appellant noted when he moved furniture sometime in early June 2003. The Board finds the opinion of Dr. Paxson to be speculative as to the etiology of appellant’s left-sided neck condition, stating only that spasms are common in similar work assignments. Dr. Paxson did not provide a

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

reasoned medical opinion that appellant's condition was caused or aggravated by his work duties.<sup>5</sup>

The November 11, 1995 report from Dr. Henriksen predates appellant's claim and does not establish a causal relationship between appellant's employment and his claimed conditions. Dr. Bonsack noted shoulder pain but did not support a work-related diagnosis with objective findings. He merely noted appellant's subjective symptoms without attributing his condition to work factors. The Board has long held that medical reports not containing rationale on causal relation are entitled to little probative value.<sup>6</sup>

Appellant also submitted multiple clinical notes signed by physicians' assistants from June 20 to July 3, 2003. However, a physician's assistant is not a physician under the Act and these reports have no probative value on the issue of medical causation.<sup>7</sup>

While appellant believes that his work assignments on April 9, 2002 and June 11, 2003, as well as moving furniture in early June 2003, contributed to an aggravation of his shoulder, neck and arm conditions, the record contains insufficient medical evidence explaining how those specific work factors caused or aggravated his symptoms. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.<sup>8</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.<sup>9</sup>

As there is no probative, rationalized medical evidence explaining why appellant's medical condition was caused or aggravated by factors of his employment, appellant has not met her burden of proof to establishing an injury arising in the performance of duty. The Board will affirm the Office's finding that appellant did not sustain a compensable injury.

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

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<sup>5</sup> *Solomon Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *Annie L. Billingsley*, 50 ECAB 210 (1998).

<sup>7</sup> 5 U.S.C. § 8101(2); *Ricky S. Storms*, 52 ECAB 349, 353 (2001).

<sup>8</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>9</sup> The Office informed appellant of the deficiencies in the medical evidence and what was needed to establish his claim in a letter dated July 23, 2003.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 27, 2004 is affirmed.

Issued: February 14, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member